UNC Nuclear Industries, a Subsidiary of United Nuclear Corporation, a UNC Resources Co. *and* Nucleonics Alliance Local I-369, Oil, Chemical & Atomic Workers International Union. Case 19-CA-13437

10 February 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

On 23 August 1982 Administrative Law Judge James T. Barker issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed a response thereto and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions, except as noted below, and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

[1] In adopting the judge's conclusions, we do not rely on his finding that the Respondent's unilateral institution of its oral startup readiness test did not violate Sec. 8(a)(5) because, inter alia, it was an "easy" test. The difficulty of the test is irrelevant to the determination of whether the Respondent violated Sec. 8(a)(5).

DECISION

STATEMENT OF THE CASE

JAMES T. BARKER, Administrative Law Judge: This case was heard before me at Richland, Washington, on May 4, 1982, pursuant to a complaint and notice of hearing issued on June 30, 1981, by the Acting Regional Director for Region 19 of the National Labor Relations Board.[1] The complaint is based on a charge filed on April 9 by Nucleonics Alliance Local I-369, Oil, Chemical & Atomic Workers International Union, hereinafter called the Local, and an amended charge filed by the Local on May 26. The respective charges were timely served on the Respondent by certified mail. The Respondent filed an answer denying the commission of any unfair labor practices. The parties were provided full opportunity to introduce relevant evidence, to examine and cross-examine witnesses, to make opening and closing statements, and to file briefs with me. Counsel for the General Counsel and counsel for the Respondent timely filed briefs.

On my observation of the witnesses, the entire record in this proceeding, and briefs filed herein, I make the following

[1] Unless otherwise specified, all dates herein refer to the calendar year 1981.

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

UNC Nuclear Industries, a Subsidiary of United Nuclear Corporation, a UNC Resources Co., herein called the Respondent, is a Delaware corporation with an office and place of business in Richland, Washington, where it is engaged in the business of operating a nuclear reactor.

During the 12-month period immediately preceding the issuance of the complaint herein, the Respondent, in the course and conduct of its business operations, purchased and caused to be transferred and delivered to its facilities within the State of Washington goods and materials valued in excess of $50,000 directly from sources outside the State of Washington or from suppliers within said State which in turn obtained such goods and materials directly from sources outside the State of Washington.

Similarly, during the 12-month period immediately preceding the issuance of the complaint, the Respondent, in the course and conduct of its business operations, had gross revenues from all sales and performance of services equal to or in excess of $1 million.

Upon these facts, which are not in dispute, I find that at all times material herein the Respondent has been an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Respondent concedes, and I find, that at all times material herein the Local has been a labor organization within the meaning of Section 2(5) of the Act and a constituent member of the Hanford Atomic Metal Trades Council, herein called HAMTC, an entity which, I find, has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issues*

The pleadings raise the following principal issues:

1. Whether the oral test relating to plant modifications made during the 1980 summer outage which the Respondent administered on March 8 and sought to administer on March 9 was a mandatory subject of bargaining.

2. Whether the Respondent violated Section 8(a)(5) and (1) of the Act by failing to notify HAMTC of its desire to administer the oral test and to provide HAMTC with an opportunity to bargain collectively concerning the test.

3. Whether the Respondent violated Section 8(a)(1) of the Act by: (a) suspending employees who refused to take the oral test, and (b) suspending an employee who had taken the test but who thereafter left work in protest over the suspension of his fellow employees.

B. *Pertinent Facts*

1. Background facts

a. *The bargaining relationship*

At times pertinent herein, Thomas G. Deen has been the Respondent's manager of labor relations, Robert J. Pyzel was manager of in-plant operations, and David B. Ferguson has been B-shift manager. The Respondent's Richland, Washington, facility is operated on a 24-hour basis and four rotating shifts (designated A, B, C, and D) are utilized to accomplish this around-the-clock, 7-day-per-week operation. At material times, Ferguson reported directly to Pyzel.

In or about 1948 a majority of the employees of the Respondent employed in the following unit designated and selected HAMTC as their exclusive representative for the purpose of collective bargaining:

> All production and maintenance employees employed by the Employer at its Hanford N Reactor at Richland, Washington, and excluding all clerical employees, guards and supervisors as defined by the Act.

At all times since 1948 HAMTC has been, and presently is, the exclusive representative of the employees in the above-described appropriate collective-bargaining unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.[2] The Local is a constituent member of HAMTC.

In 1980 the Respondent and HAMTC engaged in collective-bargaining negotiations which in December 1980 had culminated in a collective-bargaining agreement. Subsequently, on April 10, 1981, representatives of the Respondent and HAMTC executed a document embodying the terms of a collective-bargaining agreement to be effective from April 1, 1980, through March 31, 1983. Article I extends recognition to HAMTC as the sole and exclusive collective-bargaining representative of employees of the Respondent in job classifications set forth in an appendix to the agreement. The appendix identifies 29 separate seniority groups, affiliated with 14 separate local unions, all specified as being represented by HAMTC. Article XXIX of the agreement provides as follows:

> AUTHORITY
>
> *The Council is represented in its dealings with the Company by the General Counsel, Business Representative, or the President, Hanford Atomic Metal Trades Council, subject to the Bylaws of that organization,* and the Company is represented by the Manager, Labor Relations, or the President of the Company, or such representative as the President shall specifically designate in writing. It is understood and agreed that the incumbents of the aforesaid positions have authority on behalf of the Council and the Company, respectively, to modify this Agreement, to enter into arrangements to carry out and effectuate this Agreement, and otherwise to bargain collectively and that *no agreements, arrangements, or understandings shall be binding upon the parties hereto unless executed in writing by such authorized representatives of the Company and the Council.* [Emphasis added.]

The bylaws of HAMTC provide that HAMTC shall be composed of delegates from the affiliated unions elected by secret ballots of the members thereof. Each affiliated local union is entitled under the bylaws to six delegates and to one representative on the negotiating committee separately formulated to conduct negotiations with the employer employing members of that local union. The bylaws require that any commitment binding the Council to action or agreement must first be cleared by the Council or by the executive board of the Council. The bylaws further provide that when a general policy has been adopted by the Council, "tending toward a general agreement with an employer," no affiliated local union will be permitted to enter a separate agreement without the consent and approval of the Council. The bylaws further provide that all collective-bargaining agreements are subject to a rejection referendum vote of the affiliated membership. Pursuant to article VI, section 1, of the bylaws, the president of HAMTC serves as chairman of the negotiating committee.

Each seniority group under the collective-bargaining agreement has its own steward. The bylaws of HAMTC requires each local union affiliated with the Council to furnish the names of their stewards and chief and requires that all chief stewards act under the direction of the Council. At pertinent times Stanley Lepka served as chief steward representing Seniority Group 552. Lepka credibly testified that no affiliated or constituent union of HAMTC can bargain directly with any of the employers. He further credibly testified that HAMTC is the recognized collective-bargaining representative and that liaison between HAMTC and the employer would be through the particular affiliated local union of which the employees of that employer are members.

The collective-bargaining agreement contains a three-step grievance procedure culminating in arbitration. A grievance must be initiated within 10 days of the "occurrence of the grievance, exclusive of Saturdays, Sundays, and holidays."

b. *The certified reactor operators*

Pertinent to the instant proceeding are certified reactor operators employed in Seniority Group 552 comprised of a segment of the employees employed at the 100–N area at the Hanford project at Richland, Washington. In Seniority Group 552 are employed certified reactor operators, reactor operators, operator trainees, reactor trainees, and process operators.

The principal task of a certified reactor operator is to control the reactor operation from the control room, an enclosed area approximately 80 feet by 40 feet situated within the reactor itself. The primary control function is carried out at three different console stations within the control room. The nuclear console is employed to con-

[2] A stipulation of the parties establishes the foregoing.

trol the reactivity and power level of the reactor. A second console is used to monitor and control the primary cooling to the reactor, while a third console serves as the secondary cooling facility which cools the primary system. Four to six certified reactor operators comprised the normal shift in the control room. At any given time, only three certified operators are involved in console duties, which are rotated at given intervals during the shift. The certified operators who at a given time during the shift are not performing console duties devote their time to the performance of communications duties, operation of the computer, completion of paperwork, or involvement in necessary study to remain current with respect to procedures and duties. Certified operators could be assigned to perform duties outside the control room such as maintenance, laundry, and patrol, but these are usually performed by reactor operators who are not certified and are in a lower pay category.

Trainees for certification as reactor operators undergo an 18-month training program. The first year of training is administered in four different phases, followed by an 8-hour written examination. Successful completion of the examination permits the trainee to continue further training in preparation for a demonstration test, which is an oral test. Subsequently, following further training, an oral board examination is administered to the trainee. Upon successful completion of the oral board examination, the trainee is certified as a reactor operator. The certified reactor operator classification is compensated at a pay scale superior to the other job classifications in Seniority Group 552.

Through the operation of the consoles within the control room, the certified reactor operators control the reactivity or cooling of the reactor core. A mistake by a certified reactor operator in controlling the reactor could have serious consequences such as a loss of cooling causing a core meltdown. A significant major accident jeopardizing health in a large geographic area could result from a core meltdown.

Thus, to augment the initial training program which had led to certification, a recertification training program is administered to newly certified operators. It commences immediately after initial certification and covers a 2-year time frame, punctuated by quarterly written examinations. At the end of the 2-year training phase, a demonstration test conducted in the control room is administered. The demonstration test is an oral examination.

In order to remain in an operator classification requiring certification, a certified operator must be retrained and reexamined on all parts of the certification requirements at least once every 2 years.[3]

Supplement agreement 25 to the current collective-bargaining agreement between the Respondent and HAMTC provides, in pertinent part:

> By directive from the Department of Energy, individuals who control the operation of the N Reactor must qualify by following a formalized training and certification program. These programs are outlined in documents UNI-143 and UNI-144 and are subject to periodic review and up-dating to incorporate changes in the Reactor Operations process. Changes will be reviewed with Union representatives at the time they are incorporated in the program . . . .
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> . . . .
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> An Operator who has previously been certified but who demonstrates that he can no longer meet the Certified Operator requirements after having received re-training in accordance with the foregoing shall be removed from the Nuclear Reactor Control Operator—Certified classification and downgraded to the Nuclear Reactor Operator classification, provided he has sufficient seniority to take a job in that lower classification . . . .
>
> The number of N Grade 23 Operators assigned to the Control Room at the start of any given shift shall not be less than three (3). N Grade 23 Operators in excess of this minimum requirement will be considered available for relief assignments.

UNI-143 and UNI-144 contain provisions governing the reactor requalification and training programs for certified operators and supervisors and the certification program for certified operators and supervisors. UNI-143 provides that, "[t]o ensure that all operators maintain their skill in manipulating reactivity control systems, it is required that each operator perform a minimum of eight different activity manipulations every two years." The document also contains provisions governing the evaluation of certified operators and provides for quarterly examinations as follows:

> Written Examinations will be used to evaluate the reclassification program. Oral examinations may be used to supplement this examination. Results of the examination will be discussed with the respective operator or supervisor.
>
> A grade of less than 70 percent requires overall mandatory participation in an accelerated reclassification program. An individual enrolled in an accelerated reclassification program shall not perform certified duties until he has successfully completed the program.

The document also provides that "[o]ther written and/or oral examinations shall be administered as deemed necessary during the course of the lecture series." A grade of less than 70 percent will require additional retraining in that subject.

c. *The oral test decision*

At regular intervals the reactor is shut down for maintenance. A normal summer outage for maintenance would last 90 days. During this period of time installations and modifications are made which change the operation of the plant somewhat. During the outage, certified reactor operators receive training in the form of lectures and classroom work from a trainer to acquaint them with the nature of the changes which have been incorporated. The training sometimes involves a visual "walk through"

[3] All of the foregoing is based on credited testimony of record which is not in dispute, considered in connection with documentary evidence of record.

inspection to observe changes that have been made. The lecture and classroom regime involves open discussion between the trainer and the operators and among the operators inter se. In years prior to 1980, no oral quiz or test that was also "graded" was administered.

In May 1980 the reactor was shut down. The shutdown continued into March 1981, when the events here pertinent transpired. During the first week of March, the Respondent had submitted a request for startup to the Department of Energy. The Department of Energy rejected the request, informing the Respondent that it did not have "strong enough evidence" of the knowledge and experience level of the operators. The Respondent was informed that it was necessary to provide a more "auditable" record of the capabilities of the operators. The extended shutdown had been punctuated by collective-bargaining negotiations between the Respondent and HAMTC which, in December 1980, had culminated in a contract. Some labor unrest had accompanied the negotiations. In January, February, and early March, training materials had been made available to the certified reactor operators which encompassed, inter alia, material relating to summer 1980 design changes and startup training. Some classroom training had been conducted.

In the meantime by letter dated February 17, Thomas Deen, the Respondent's manager of labor relations, had advised HAMTC as follows:

> On Monday, February 9, 1981, UNC Nuclear Industries (UNC) met with representatives of the Hanford Atomic Metal Trades Council (HAMTC). A general discussion of all UNC training and testing programs followed which ended with a HAMTC request to clarify Criticality and Radiation Zone Work Training.
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> "Criticality Training and Radiation Zone Work Training" are, of course, both safety training programs specifically designed to promote and maintain safe working conditions for all UNC employees whose day-to-day job assignments are or may be associated with work in radiation zones or in the movement or possible movement of fissile material.
>
> As was explained, UNC does not wish to give HAMTC the erroneous impression that each and every ongoing UNC training program is safety related. Over the years, UNC has been extremely sensitive to bargaining unit employee requests for on-the-job training. Such requests and job requirements have led to many worthwhile training programs which have required the evaluation of attendees to guage the effectiveness of the programs.
>
> None of these programs, except for those specifically negotiated, have included job jeopardy or rate retention penalties. HAMTC is again assured these programs do not include job jeopardy or rate reductions and, additionally, is not an attempt to slide "certification" of any classification through the backdoor. The facts of the case are that such programs are efforts to improve employee job qualifications.
>
> UNC additionally states that if something new in training and testing is imposed by the Department of Energy or other appropriate agency which makes new testing a mandatory condition for retaining employment and thus represents a problem of job jeopardy to employees, UNC must, of course, impose such required tests. However, the Council can be assured that if UNC initiates new testing requirements which involve employee job jeopardy, UNC will meet with the Council to discuss the impact of those requirements on the employees affected, including problems of job jeopardy or rate retention.

2. Alleged proscribed conduct

a. *The preparation for testing*

In the days immediately preceding March 8, the Respondent reached the determination that to provide a more "auditable" record of the level of capability of the certified reactor operators an oral quiz or test would be administered to the operators. Accordingly, Robert Pyzel, the Respondent's manager of in-plant operations, determined that 10 questions would be selected from a population of approximately 70 questions relating to modifications effectuated during the then current outage, and would be presented to the operator being tested for his oral response. Pyzel determined that, on each of the four shifts, the control room supervisor would administer the test separately to each operator. On the basis of the responses received the supervisor administering the test would make a judgment whether the operator taking the test had sufficient knowledge "to carry forward in the operation of the plant." Pyzel conveyed this information to the shift supervisors, and to David Ferguson, B-shift manager. Pyzel also instructed the supervisors that, if the determination was made on the basis of the test that a given operator needed further training, training should be provided. Any operator requiring further training would not lose salary or job status and no change would be made in his job classification. However, any operator undergoing training necessary to establish his readiness would not be permitted to operate the consoles but would be used only in the performance of the other duties of his job classification.

b. *The tests administered*

On March 8, soon after the start of the graveyard shift at 12 midnight, David Ferguson spoke with Niels Kaas and four other certified operators assigned to the shift. Ferguson informed the operators he was going to administer an oral test pertaining to the design changes that had taken place during the outage. This confirmed information that had been imparted to the operators by Martha Koop, a D-shift reactor operator, just prior to the commencement of the graveyard shift. Ferguson told the operators that they would receive training prior to taking the test. The operators interposed an objection to taking an oral test. Their objection was based on two grounds: (1) they had never previously been required to take a test prior to startup following summer outages,

and (2) a quarterly requalification test was scheduled to be administered in approximately 2 weeks.

Nevertheless, during the shift, lectures were conducted. The lectures related to written material that had been distributed covering the design changes which had been accomplished during the outage. The lectures were conducted by a control room supervisor in the presence of Ferguson and another supervisor.

As an initial step in the actual administration of the test, in the morning hours of Sunday, March 8, Pyzel administered an oral quiz to Ferguson. In so doing, Pyzel used a prepared form on which he recorded his own evaluation of the extent or degree of comprehension shown by Ferguson. From this process of evaluation he reached the conclusion that Ferguson did not require further training. He so noted on the form. Thereupon, Pyzel instructed Ferguson to administer a separate test to the operators under his supervision in a manner consistent with the routine which Pyzel had followed.

Later, following the completion of the lectures which had been accomplished on the graveyard shift, Ferguson requested Kaas to accompany him to his office for the purpose of taking the test. Kaas did so. Thereupon, Ferguson administered the oral test to Kaas in a manner consistent with the instructions which Pyzel had imparted to Ferguson. At the same time, another certified control operator on the graveyard shift was given a test by one of the two B-shift supervisors. Neither Kaas nor the other operator was found to require further training.

During the course of the workday on March 8, the following certified reactor operators refused to take the test: Timm Bettendorf, Gary Brownell, Steve Faulk, Scott Hamaker, Stanley Lepka, Suzanne Lindberg, Chet Riegel, and Don Schroder.

c. *The Respondent contacts the Local*

During the afternoon of Sunday, March 8, Thomas Deen attempted to reach Stanley Lepka, the chief steward of the Local, by telephone at Lepka's residence. Deen initiated the telephone call from his office. He was unable to reach Lepka and thus called James Watts, president of the Local, at his residence to verify the accuracy of the telephone number which he, Deen, had been using in his effort to contact Lepka. In speaking with Watts, Deen stated that he wished to discuss with Lepka a test that he wished to administer to the certified reactor operators. Deen explained that the test was to be in the nature of a refamiliarization test necessitated by the length of the current outage. Deen explained that the test would be oral and would consist of 10 questions selected at random from a larger population of questions, that a record would be kept to determine whether the operator was able to answer the questions, that no record of the specific answers given would be recorded, and that no job jeopardy would attach to the test. Deen informed Watts that the test was for audit purposes in order to demonstrate to the Department of Energy the startup readiness of the reactor. Deen told Watts that the certified reactor operators would receive training.

During the course of the day, Deen was successful in contacting Lepka, and he conveyed to Lepka the same information which he had imparted to Watts. A series of telephone conversations transpired between Lepka and Deen and between Lepka and Watts. During the day, Lepka spoke with Martha Koop, the shift steward on D shift with hours from 4 p.m. to 12 midnight. Lepka concluded from Koop's comments to him that a majority of the operators on D shift did not wish to take the test. Moreover, from his discussions with Watts, Lepka concluded that resolution of the issue could be postponed until the following day, a normal workday. Lepka conveyed this conclusion to Deen, together with the suggestion that the test be combined and made a part of the quarterly recertification test which was scheduled to be administered in 2 or 3 weeks. It was suggested by Lepka that the combined test be administered in a day or two. Deen responded that no job jeopardy attached to the test and that the scope of this examination was not sufficient to warrant making it a part of the quarterly requalification examination. Deen offered to dispatch a letter confirming that no job jeopardy was involved in the oral test that management was seeking to administer. Lepka responded that he did not believe the operators would be willing to take the test. Deen informed Lepka that management would proceed to administer the test.

In a separate conversation between Deen and Watts, the concept of combining the test with the scheduled requalification test was also discussed, and Deen affirmatively stated that the test in question was not a requalification test to which job jeopardy attached. Watts stated that Deen should advise HAMTC concerning management's intention to administer the test and should bargain concerning the test. Deen informed Watts that management intended to administer the test and that any operator who refused to take the test would be sent home.

d. *HAMTC informed*

On Sunday evening, March 8, Deen called Pete Todish, president of HAMTC, and informed him that the certified operators had indicated that they would refuse to take an oral examination which management intended to administer. Deen told Todish management viewed this refusal as insubordination and if the operators did, in fact, refuse to take the examination, they would be sent home.

e. *The discussions with the certified operators*

Subsequently, on the morning of March 9, Ferguson informed the certified operators on the shift that those who had refused to take the test would be given another opportunity to take it and, if they refused, they would be sent home. The operators requested to speak with Dunn, the Respondent's vice president. Dunn met the operators in the control room. Kaas asked Dunn why the operators were being required to take an oral test which had never been administered prior to other reactor startups. Dunn responded that, due to the extended length of the present outage, the Company had to assure the Department of Energy that the operators were competent and prepared for the requested startup. Kaas asked why other crafts did not have to take the test and why the test was being administered only to control room operators. Dunn responded that the certified control room operators were

more critical to the operations of the reactor. He added that the Company had to assure the Department of Energy that the operators were sufficiently competent to warrant the startup. Thereupon, Kaas asked Dunn why the oral quiz could not be incorporated into the written quiz which was upcoming in approximately 2 weeks. Dunn responded that the Company expected to have the reactor operating before then. Kaas suggested that the oral and written test be combined and administered the following day. Dunn answered that this was not possible. During the meeting, one of the operators asked if it would be possible to delay until 8 a.m. any further action so that the employees could get in touch with the union representatives. Dunn answered in the negative. He said that the operators could either take the test or go home.

At this juncture, Kaas told Dunn that he thought he was being "very unreasonable" and asserted that, if the other operators were sent home, he would go also. The other operator who had taken the oral quiz initially stated his intention to leave with the other operators. However, he did not do so. Kaas testified that the operators' decision to leave was influenced by transportation difficulties.

Kaas testified that past practice had permitted operators who had failed tests to be given further opportunity to take the tests. He further testified that "possibly" the certified operators were told that if they failed the test they would be retested in order to qualify.

f. *Employees suspended*

On March 9 each of the employees who had refused to take part in the oral test was suspended. Thereupon, Niels Kaas left work because of his sympathy and support for the employees who refused to take the test. Subsequent to March 9, written reprimands were issued to each of the employees who had refused to participate in the oral test, as well as to Kaas because of his sympathy and support for the employees who had refused to take the test.

g. *The aftermath*

At approximately 1:30 p.m. on Monday, March 9, Deen and another representative of management met with Lepka and Watts at the Richland Labor Temple. Pete Todish was present as were Koop and two other representatives of the Local. During the course of the meeting, Todish, Watts, and Lepka took the position that the oral test overlapped in some degree the qualification test which was pending, and asserted that the decision to administer the oral test was a bargainable issue. In substance, management insisted that it possessed the authority and right to administer the test. After caucuses and further discussion between the parties, a meeting of the minds was achieved with respect to administering the test. The discussion then turned to the question of compensation for the certified operators who had been sent home for refusing to take the test. The Local insisted on compensation for the employees while the Company refused. The Local's representatives informed Deen that unfair labor practice proceedings would be initiated.

In due course, Deen dispatched to Todish the following letter dated March 9:

> This letter concerns the startup readiness review test we discussed today covering the plant changes made during the recent outage. While the Company retains the right of supervisors to verify employee job knowledge, in this instance the Company is willing to change this startup readiness review verification to a written test. In so doing, the results of this test will be applied as a basis for 50% of your next subsequent requalification examination.

As a result of negotiations conducted on June 23 and July 7 between the Respondent and the Local, agreement was achieved as to "ways and methods whereby the start-up readiness of the Certified Reactor Operators could be ascertained" with respect to the 1981 summer outage. HAMTC was so advised by letter of July 7.

C. *Conclusions*

1. Prefatory findings

The complaint alleges and the record establishes that HAMTC is, and has been at all times material, the exclusive collective-bargaining represenative of the Respondent's employees in a unit appropriate for the purposes of collective bargaining. The General Counsel does not challenge the exclusivity of HAMTC's status and nothing in the complaint seeks in any manner to alter the statutory obligation of the Respondent to bargain collectively only with HAMTC, and no other labor organization, as the designated representative of unit employees. I reject the contention raised by the Respondent in its motion to dismiss that, by issuing a complaint and proceeding to hearing based on a charge filed not by HAMTC but by the Local, a mere constituent member of HAMTC, the General Counsel is attempting to expand the Respondent's collective-bargaining duty to include an obligation to negotiate changes in wages, hours, terms and conditions of employment not only with HAMTC, but with the constituent local of which the affected employees may be a member. Nothing in the complaint, or in this decision, carries that connotation. Moreover, contrary to the Respondent, the Local has standing under the Act to file a charge, a fact emphasized by the breadth and inclusive reach of Section 102.9 of the Board's Rules and Regulations, which provides: "[A] charge that any person has engaged in or is engaging in any unfair labor practice affecting commerce may be made by any person." My ruling denying the Respondent's motion to dismiss made at the outset of the hearing, and renewed at the end of the General Counsel's case-in-chief, is hereby affirmed.

In a threshold sense, I further find that the matter of oral testing to determine the startup readiness of certified reactor operators is not specifically covered by the collective-bargaining agreement, or suppplemental agreement 25, and exists no formal, contractual recognition of the Respondent's right to administer an oral test for that purpose. Contrary to the Respondent, the record shows that the Respondent did not undertake to consult or bar-

gain with HAMTC concerning any facet of the oral test, including the timing and manner of its administration, until after the test had been administered to some employees in the unit and others had been instructed to be orally tested by supervision. Similarly, consultation with officials and representatives of the Local came after some testing of unit employees, and was not, in any event, a legally acceptable means of notification, consultation, or bargaining with the designated bargaining representative, HAMTC. Therefore, assuming, arguendo, the test is found to have had a direct effect on tenure, to have had a material, substantial, and significant effect on working conditions or to have carried penalties of significance which effect conditions of employment, it must be concluded that the test constituted a mandatory subject of bargaining, and that the Respondent could not have lawfully bypassed HAMTC. See *Capital Times Co.*, 223 NLRB 651, 653-654 (1976); *Alfred M. Lewis, Inc. v. NLRB*, 587 F.2d 403, 411-412 (9th Cir. 1978).

2. The merits

The ultimate issue in this proceeding is whether the decision of the Respondent to administer startup readiness tests to certified reactor operators materially, substantially, or significantly changed the working conditions of the certified reactor operators and the other employees employed in the unit represented by HAMTC. I conclude that it did not. Rather, I find that the Respondent's resort to an oral test as an extension of its existing summer outage training program was an element of the Respondent's day-to-day managerial control which it was free to exercise. Moreover, while I find that the Respondent's decision to orally test the certified reactor operators for the purpose of surveying their comprehension of summer design modifications confronted unit employees with arguably potential and prospective changes in job content or working conditions, the likelihood of those changes actually coming to fruition was so remote by reason of the nature of material covered in the test, the skill level of the certified personnel to which it pertained, and the virtually open-ended familiarization and training policy employed by the Respondent as to render the departure from established training policy insignificant, insubstantial, and substantively minor and the threat to existing working conditions, job content, or job tenure virtually nonexistent.

In my view of the controlling precedent, the mere existence of a remote potential for change in working conditions does not equate either to a present change of substance or to the creation of a new policy to be implemented automatically in the event of a reasonably foreseeable work-related occurrence or circumstance.

It is well settled that an employer violates its duty to bargain collectively when it institutes changes in employment conditions without consulting the majority representative of its employees. E.g., *NLRB v. W. R. Grace & Co.*, 571 F.2d 279, 282 (5th Cir. 1978); *NLRB v. Katz*, 369 U.S. 736, 743 (1962). Changes which significantly affect the working conditions of unit employees are subject to mandatory negotiations between the employer and the collective-bargaining representative of the employees affected. *Amoco Chemicals Corp.*, 211 NLRB 618 (1974), enfd. in part 529 F.2d 427 (5th Cir. 1976); *Murphy Diesel Co.*, 184 NLRB 757, 763 (1970), enfd. 454 F.2d 303 (7th Cir. 1971); *Production Plated Plastics*, 254 NLRB 560 (1981). However, not every unilateral change in work or in work rules constitutes a breach of the bargaining obligation. *Peerless Food Products*, 236 NLRB 161 (1978). The change unilaterally imposed must, initially, amount to "a material, substantial, and a significant" one. Id. Moreover, there arises no obligation to bargain concerning changes which depart in an insignificant manner from established practice while leaving the practice intact. *Rust Craft Broadcasting*, 225 NLRB 327 (1976); *Trading Port, Inc.*, 224 NLRB 980, 983-984 (1976); *Wabash Transformer Corp.*, 215 NLRB 546 (1974); *American Ambulance*, 255 NLRB 417, 422-423 (1981).

The record establishes that in previous years, in preparation for resuming operations following annual summer outages, the Respondent had followed a practice of providing certified reactor operators with written material detailing changes and modifications in the reactor which had been accomplished during the outage. As an adjunct to this familiarization routine, lectures had been conducted, discussions had been held between operators and supervision, and a walk through of relevant portions of the reactor had been accomplished for the purpose of insuring the operational readiness of the certified reactor operators. In this respect, UNI-143, effectively an integrated part of the collective-bargaining agreement, provides that an explanation of major changes will be covered as part of a preplanned lecture series "prior to startup of the summer maintenance outage." No provision in the integrated collective-bargaining agreement is made for oral testing. Accordingly, the oral testing here undertaken constituted a departure from past practice in the sense that an "auditable" record was made supporting a judgmental decision of supervision that the certified operator tested either possessed sufficient readiness or needed further training. However, in all respect, both in purpose and objective, the oral testing was intended to serve as a mere extension of the established summer outage training program and presented no direct threat or impairment to the wages, hours, job classification, or employment tenure of the certified operator or other employee in the bargaining unit. The lack of material, substantial, or significant change in the startup readiness training program is revealed by the fact that questions to be included in the oral quiz were to be drawn from material made previously available to certified operators, who, in the manner of previous summer outage review, had received or would receive lectures and training in the material encompassed. The test embodied no new areas of expertise beyond the previous competence of the incumbent certified nuclear operators to whom the test would be administered, but involved material well within the ready comprehension of these trained operators and required no lengthy training regime. The absence of any perceived barrier to easy, successful completion of the test is attested to by the willingness of Lepka, who was conducting a dialogue with the Respondent in his official capacity on behalf of the Local, to permit testing to proceed after a

"day or two" of training.[4] Moreover, under the Respondent's stated policy, any operator found to lack present comprehension of the material had the assurance of further training and no limitation was placed on either the extent of the further training which would be offered to assist in the successful comprehension of the relevant material or the number of test opportunities which any given operator would have available. Thus, in the circumstances defined, the exclusion of an operator from performance of console duties, which would be occasioned by any failure to establish startup readiness, would, in the nature of things, be essentially shortlived, if not transitory; the jeopardy to employee working conditions was so indirect, theoretical, and contingent upon future events unlikely to occur as to be insignificant, if not nonexistent. In any event, this potential limitation on a certified operator's freedom to perform the full range of his or her duties was inferentially present under the previously existing summer outage familiarization procedure, for the nature of the hazards in the industry, generally, and in the instant facility, specifically, are such as to have precluded supervision from freeing operators who had not disclosed a mastery of and full familiarity with summer design change material to perform the important console functions. Again, the objective and result of Respondent's summer outage familiarization program remained constant. The oral test represented a change of form but not of substance.

While under the statute there exists during the terms of a collective-bargaining agreement a duty on the part of an employer to notify the majority bargaining representative and provide a meaningful opportunity to bargain collectively regarding changes and working conditions which the employer proposes to make in terms of employment not specifically covered in the existing bargaining agreement, including contemplated changes in prevailing practices affecting unit employees, the departure here did not, in the circumstances, constitute a radical change representing a "material, substantial, and a significant change" from prior practice. In my view, the instant case is controlled by the rationale and general policy parameters articulated by the Board in *Rust Craft Broadcasting*, supra; *Trading Port*, supra; and *Wabash Transforming Corp.*, supra. Cf., *Soule Glass & Glazing Co. v. NLRB*, 652 F.2d 1055 (1st Cir. 1981); *Wil-Kil Pest Control Co.*, 440 F.2d 371 (7th Cir. 1971), enfg. 181 NLRB 749 (1970).

In light of the foregoing, I find that the General Counsel has failed to establish by a preponderance of the evidence that the Respondent violated the Act either by requiring certified reactor operators to take an oral test designed to determine their comprehension of modifications made during the summer outage of 1981 or by disciplining the certified reactor operators who refused to take the test. Similarly, the Respondent acted within its legitimate managerial discretion in discipling Niels Kaas for his sympathetic refusal to perform assigned duties.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended

ORDER[5]

The complaint is dismissed in its entirety.

[4] Niels Kaas, a certified operator, was so sanguine as to suggest the oral quiz be incorporated into a more comprehensive written test and administered "the following day."

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.